

Remarks and Arguments

1. Removal Of Wiginton as a Reference Under Section 102

The Inventor Declaration removes Wiginton, Pub. US 2002/0087966, as a reference under 35 USC Sec.102, since the Inventor completed building and testing the Invention in the United Kingdom at least as early as November 15, 2000. Wiginton was filed November 29, 2001 but was not published until July 4, 2002. The present Application was filed December 27, 2001. The attached Declarations of the Inventor and the owner of ExperTune, Inc, the assignee of the Invention, attest these facts and dates. Specifically, 35 USC Sect 102 (e) does not apply because it is not true that "...the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent..." The Invention of the Application was built and tested in the United Kingdom, which was a WTO country before January 1, 1996 as stated in MPEP 201.13. In fact, the website of the WTO indicates that the United Kingdom became a WTO member country effective January 1, 1995. In addition under 37 CFR 1.601(n), the Invention of the Application is not the same invention as the invention of Wiginton, since the claims of the present Application do not read on Wiginton, and the Invention of the present Application is not obvious under 35 USC Sec. 103. This will be demonstrated below. The Patent Office has not suggested an Interference between Wiginton and the Inventor of the Application.

2. Rejection Under Section 103 Fails Because Wiginton is Removed as Reference

Since the Inventor has removed Wiginton as a reference, as set out above, the rejection under 35 USC Sec. 103 in view of Wiginton and Gauthier should be withdrawn, since the Invention predated Wiginton, and therefore the Invention could not have been obvious to a person of ordinary skill in the art at the time the Invention was made, since the effective date of Wiginton as a reference is November 29, 2001, whereas the Invention was built and tested at least as early as November 15, 2000 in the United Kingdom, a WTO country at the relevant time. See MPEP 715.02(I).

3. Claims of the Application do not read on Wiginton Under Section 102

Claims 1, 3-4, 6-7, 9-14, and 16-21 stand rejected on the grounds that they read on Wiginton under Section 102. It is important to recognize that the present Invention **does not install** programs as in Wiginton. Rather the Invention adapts a process control program **already installed** on a computer to the operational characteristics of various sensors and controllers which may be involved in the controlled process. Wiginton requires substantial knowledge of computer programming to operate the invention, whereas the present Invention does not require any such knowledge. With the ExperTune wizard the same computer program contains both the wizard builder and the code to execute the wizard because both functions are not aimed at software experts. In Wiginton it is specifically stated to be two different programs as the wizard builder function requires a software expert.

The Office Action of October 6, 2004 states in reference to the present Invention on page 3 in regard to claim 1 "...Wiginton teaches...a wizard builder for adapting an application program to function with devices or sensors monitoring or controlling a process occurring in real-time...sets up a de-facto interface between devices or sensors and the application program." **This statement is incorrect.** As stated above, Wiginton enables a user to install a computer program, whereas the Invention does not install any program, but merely adapts a program **previously installed** on a computer to work with various sensors and controllers based on their operational characteristics. Specifically the following elements in Claim 1 are **not found** in Wiginton : "...for adapting an application program to function with devices or sensors...", "constructs a setup wizard which sets up a de-facto interface between the devices or sensors and the application program..." In addition, Wiginton does not anywhere mention "questions...about the model and manufacturer of the devices or sensors..." Therefore, since these elements are nowhere found in Wiginton, claim 1 does not read on Wiginton, and the rejection of claim 1 should be withdrawn.

Since claims 3 and 4 add additional elements beyond claim 1, they cannot read on Wiginton since claim 1 does not read on Wiginton, and the rejection of those claims should be withdrawn.

Since claim 6 and 7 add more elements to claim 1 they cannot read on Wiginton since claim 1 does not read on Wiginton, and the rejection of those claims should be

withdrawn. On page 4 of the Office Action, in the rejections of claims 6 and 7, there is mention of sensors and devices for monitoring or controlling processes. **There is no mention of such devices and sensors in Wiginton at all.**

Claims 9-14 are dependent from claim 1 or 7, and add further elements. Since claims 1 and 7 do not read on Wiginton, these claims cannot possibly read on Wiginton. The rejection of these claims refers to "devices and sensors" **There is no mention in Wiginton of such devices or sensors.** The rejection of these claims should be withdrawn.

Claims 16-20 depend from claims 3 or 14. It has been shown that these claims do not read on Wiginton, and therefore, since claims 16-20 add further elements, they cannot possibly read on Wiginton. The rejection of these claims should be withdrawn.

Regarding claim 21, the Office Action states on page 6 "...Wiginton teaches a wizard builder...implemented as a wizard which does **not** use scripts to build the wizard." The reference for that is paragraph 25, lines 1-8. **Wiginton says the exact opposite:** "The Wizard Building Application **contains** code and/or scripts to generate..." Therefore the rejection of claim 21 as reading on Wiginton should be withdrawn.

4. Without Wiginton the 103 Rejection Fails

Since Wiginton has been removed as a reference, and since it has been demonstrated above that the claims of the Invention do not read on Wiginton, the rejection of claims 2, 5, 8, and 15 on the basis of Wiginton and Gauthier should be withdrawn. MPEP 715.02(I).

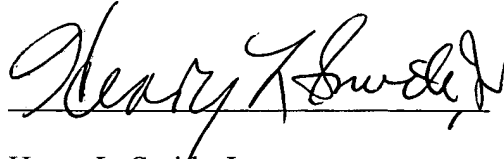
5. Claim And Specification Amendments

The claims have been amended as set out above to adequately deal with the objections raised by the Examiner under 35 USC Section 112, and to achieve complete consistency of terminology between the claims and the Specification. The Specification has been amended as set out above to clarify that in the Application "application software" and "application program" are used interchangeably, and that the wizard builder is generally contained in the application software (application program), etc. No new ideas or new matter has been introduced. The clarifications are clear from the context of the Application.

Conclusion

Because of the above amendments, and because of the above discussion and arguments, Applicant respectfully submits that the Application, with claims as amended above, is now in condition for allowance, and that action is urgently requested. Enclosed is a check for the fee required by the attached Petition for Extension of Time.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Henry L. Smith, Jr.", written over a horizontal line.

Henry L. Smith, Jr.

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